

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

NO. 2:21-cv-00728-RSM

STIPULATED PROTECTIVE ORDER

LANDMARK TECHNOLOGY A, LLC and
RAYMOND MERCADO, individually,

Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL MATERIAL"

25 "Confidential" material shall include the following documents and tangible things
26 produced or otherwise exchanged: (a) information prohibited from disclosure by the laws or

1 regulations of Washington or federal law or regulations; (b) Trade Secrets (as that term is defined
2 below); (c) confidential research, development, commercial, financial, or other proprietary
3 information that the designating party has maintained as confidential; or (d) personal financial,
4 employment, and personally identifiable information about individuals that is precluded from
5 public disclosure under Washington or federal law. Public records and other information or
6 documents that are publicly available, and not otherwise protected against disclosure or discovery,
7 are not confidential.

8 3. **“TRADE SECRET”**

9 “Trade Secret” shall mean information that qualifies for trade secret protection under
10 RCW 19.86.110, RCW 19.108.010, and Washington case law interpreting these statutes.

11 4. **SCOPE**

12 The protections conferred by this agreement cover not only confidential material (as
13 defined above), but also (1) any information copied or extracted from confidential material; (2)
14 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
15 conversations, or presentations by parties or their counsel that might reveal confidential material.

16 However, the protections conferred by this agreement do not cover information or
17 materials that are in the public domain or become part of the public domain through trial or
18 otherwise.

19 5. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

20 5.1. **Basic Principles.** A receiving party may use confidential material that is disclosed
21 or produced by another party or by a non-party in connection with this case only for prosecuting,
22 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
23 the categories of persons and under the conditions described in this agreement. Confidential
24 material must be stored and maintained by a receiving party at a location and in a secure manner
25 that ensures that access is limited to the persons authorized under this agreement.

1 5.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 2 ordered by the Court or permitted in writing by the designating party, a receiving party may
 3 disclose any confidential material only to:

4 a) the receiving party’s counsel of record in this action, as well as employees
 5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 b) the officers, directors, and employees (including in-house counsel) of the
 7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
 8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
 9 designated;

10 c) experts and consultants to whom disclosure is reasonably necessary for
 11 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 12 A);

13 d) the Court, court personnel, and court reporters and their staff;

14 e) copy or imaging services retained by counsel to assist in the duplication
 15 of confidential material, provided that counsel for the party retaining the copy or imaging service
 16 instructs the service not to disclose any confidential material to third parties and to immediately
 17 return all originals and copies of any confidential material;

18 f) during their depositions, witnesses in the action to whom disclosure is
 19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 20 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
 21 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
 22 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
 23 under this agreement;

24 g) the author or recipient of a document containing the information or a
 25 custodian or other person who otherwise possessed or knew the information;

- h) mediators or other third parties appointed by the Court or retained by the parties for settlement purposes or resolution of discovery or other disputes and their necessary staff, provided that they are given a copy of the Order and sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A) prior to being showing any Confidential Information;
- i) any other person agreed to by the parties, so long as such persons sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A) or as otherwise permitted by the Court.

5.3. Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Absent prior agreement of the parties, any party intending to file or use confidential material in a document filed with the Court (Pleading) shall file a redacted version of such Pleading that does not include or reference the confidential material, and shall serve an unredacted version of such Pleading on the designating party so as to allow the designating party an opportunity to file a motion to seal under Local Civil Rule 5(g). Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal. Failure to satisfy the requirements of Local Civil Rule 5(g)(3)(B) will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files. If no such motion is made by the designating party within ten (10) calendar days of filing the redacted Pleading, the party filing or using the confidential material may re-file the Pleading in unredacted form.

1 6. **DESIGNATING PROTECTED MATERIAL**
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34 6.1. **Exercise of Restraint and Care in Designating Material for Protection.** Each party
5 or non-party that designates information or items for protection under this agreement must take
6 care to limit any such designation to specific material that qualifies under the appropriate
7 standards. The designating party must designate for protection only those parts of material,
8 documents, items, or oral or written communications that qualify, so that other portions of the
9 material, documents, items, or communications for which protection is not warranted are not
swept unjustifiably within the ambit of this agreement.10 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
11 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
12 unnecessarily encumber or delay the case development process or to impose unnecessary
13 expenses and burdens on other parties) expose the designating party to sanctions.14 If it comes to a designating party's attention that information or items that it designated
15 for protection do not qualify for protection, the designating party must promptly notify all other
16 parties that it is withdrawing the mistaken designation.17 6.2. **Manner and Timing of Designations.** Except as otherwise provided in this
18 agreement (see, e.g., second paragraph of section 6.2(b) below), or as otherwise stipulated or
19 ordered, disclosure or discovery material that qualifies for protection under this agreement must
20 be clearly so designated before or when the material is disclosed or produced.21 a) **Information in documentary form:** (e.g., paper or electronic documents
22 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
24 contains confidential material. If only a portion or portions of the material on a page qualifies
25 for protection, the designating party also must clearly identify the protected portion(s) (e.g., by
26 making appropriate markings in the margins).

18 6.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items does not, standing alone, waive the designating party's
20 right to secure protection under this agreement for such material. Upon timely correction of a
21 designation, the receiving party must make reasonable efforts to ensure that the material is
22 treated in accordance with the provisions of this agreement.

23 | 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 7.1. Timing of Challenges. Any party or non-party may challenge a designation of
25 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 3 original designation is disclosed.

4 7.2. Meet and Confer. The parties must make every attempt to resolve any dispute
 5 regarding confidential designations without court involvement. Any motion regarding
 6 confidential designations or for a protective order must include a certification, in the motion or
 7 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 8 conference with other affected parties in an effort to resolve the dispute without court action.
 9 The certification must list the date, manner, and participants to the conference. A good faith
 10 effort to confer requires a face-to-face meeting or a telephone conference.

11 7.3. Judicial Intervention. If the parties cannot resolve a challenge without court
 12 intervention, the designating party may file and serve a motion to retain confidentiality under
 13 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 14 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 15 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 16 other parties) may expose the challenging party to sanctions. All parties shall continue to
 17 maintain the material in question as confidential until the court rules on the challenge.

18 8. PROTECTED MATERIAL SUBPOENED OR ORDERED PRODUCED IN OTHER
 19 LITIGATION

20 8.1. If a party is served with a subpoena or a court order issued in other litigation that
 21 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”
 22 that party must:

23 a) promptly notify the designating party in writing and include a copy of the
 24 subpoena or court order;

b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this order. Such notification shall include a copy of this order; and

- c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8.2. The designating party asserting the “CONFIDENTIAL” protection shall bear the burdens and fees and expenses of seeking protection of its confidential materials against such subpoena or request.

9. WASHINGTON PUBLIC RECORDS ACT

9.1. Nothing in this Order shall be construed to require Plaintiff to violate the terms of Washington's Public Records Act, RCW 42.56, or RCW 40.14, which governs preservation and destruction of government records, or any other statute, administrative rule, or court rule. Materials designated as "CONFIDENTIAL" under the terms of this Order shall not be deemed to be public records unless they are also "writing[s] containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency" However, if at any time the Washington State Office of the Attorney General (AGO) receives a request pursuant to the Washington Public Records Act that would compel disclosure of any documents or information designated in this action as "CONFIDENTIAL," the AGO shall give written notice and a copy of the request to the designating party. The designating party shall have fifteen days from notification to seek protection from the Court for those responsive materials that are designated "CONFIDENTIAL," during which period the AGO will not release any materials so designated.

9.2. In any proceeding concerning the release of confidential materials, the designating party shall have the affirmative obligation to intervene in such proceedings and to defend and substantiate any claim of confidentiality. Where any party or designating party has requested court review of a “CONFIDENTIAL” designation, the parties will treat the materials

1 that are the subject of such request as confidential until the Court's ruling. Consistent with the
 2 requirements of RCW 42.56.070, 45 C.F.R. 164.512(e)(1)(ii), and 164.512(e)(1)(v), this
 3 provision does not authorize disclosure of protected health information under HIPAA.

4 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 6 material to any person or in any circumstance not authorized under this agreement, the receiving
 7 party must immediately (a) notify in writing the designating party of the unauthorized
 8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected confidential
 9 material, (c) inform the person or persons to whom unauthorized disclosures were made of all
 10 the terms of this agreement, and (d) request that such person or persons execute the
 11 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
 13 **MATERIAL**

14 When a producing party gives notice to receiving parties that certain inadvertently
 15 produced material is subject to a claim of privilege or other protection, the obligations of the
 16 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 17 provision is not intended to modify whatever procedure may be established in an e-discovery
 18 order or agreement that provides for production without prior privilege review. The parties agree
 19 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

20 12. **NON TERMINATION AND RETURN OF DOCUMENTS**

21 Within 60 days after the termination of this action, including all appeals, each receiving
 22 party must return all confidential material to the producing party, including all copies, extracts
 23 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
 24 destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of
 25 all documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
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1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain confidential material.

3 The Attorney General's Office is required by RCW 42.56 to retain a copy of "public
4 records" from this litigation (as defined by RCW 42.56.010(3)) and may preserve a copy of such
5 records without violating this Order.

6 The confidentiality obligations imposed by this agreement shall remain in effect until a
7 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 DATED: October 20, 2023

5 s/ Aaron J. Fickes

6 AARON J. FICKES, WSBA #51584
7 BEN J. BRYSACZ, WSBA #54683
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15 *Attorneys for Plaintiff*

16 DATED: October 20, 2023

17 s/ Justin P. Walsh

18 JUSTIN P. WALSH, WSBA #40696
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21 Seattle, WA 98104
22 (206) 693-2900

23 *Attorney for Defendants*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
5 any documents, electronically stored information (ESI) or information, whether inadvertent or
6 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal
7 or state proceeding, constitute a waiver by the producing party of any privilege applicable to
8 those documents, including the attorney-client privilege, attorney work-product protection, or
9 any other privilege or protection recognized by law. This Order shall be interpreted to provide
10 the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b)
11 do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to
12 conduct a review of documents, ESI or information (including metadata) for relevance,
13 responsiveness and/or segregation of privileged and/or protected information before production.
14 Information produced in discovery that is protected as privileged or work product shall be
15 immediately returned to the producing party.

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17 DATED: October 23, 2023
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RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in
7 the case of *State of Washington v. Landmark Technology A, LLC and Raymond Mercado*, No.
8 2:21-cv-00728-RSM. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
11 in any manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 || Date:

17 | City and State where sworn and signed:

18 Printed name:

19 || Signature: